

LABOUR DEPARTMENT

The 21st October, 1975

No. 11392-4Lab-75/31791.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workmen and the management of M/s Vijay Ice and Cotton Factory, Ambala City (ii) Shri Misri Lal lesee.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 180 of 1972

between

SHRI KHAJAN CHAND AND OTHERS AND THE MANAGEMENT OF M/S VIJAY
ICE AND COTTON FACTORY, AMBALA CITY (II) SHRI MISRI LAL LESEE

AWARD

By order No. ID/Amb/132-71/21538—542, dated 16th June, 1972 of the Governor of Haryana, the following dispute between the management of M/s Vijay Ice & Cotton Factory, Ambala City (ii) Shri Misri Lal Lesee and its workmen S/Shri Khajan Singh, Raghu Nandan Lal and Ran Singh was referred for adjudication to this court, in exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947.

“Whether the termination of services of S/Shri Khajan Singh, Raghu Nandan Lal and Ran Singh was justified and in order? If not, to what relief are they entitled?”

Usual notices of the reference being sent to the parties, they appeared before this court. The workmen made a claim before the Labour Commissioner, Haryana, Chandigarh,—vide letter dated 4th December, 1971 that their services has been terminated without service of any notice on them and without regular enquiry. They further stated that the Labour Inspector in collusion with the management obtained their signatures on some writing.

The management,—vide written statement filed by them took a preliminary objection that there was a mis-joinder of parties and causes of action in the reference and that they had sold their total number of shares in favour of Shri Maher Chand with all assets and liabilities and the workmen were thus not entitled to any relief from them.

The workman pleaded,—vide replication, that the transfer of the assets and liabilities of the management if any was illegal.

The following issues were framed on pleas of the parties,—vide order dated 14th February, 1973.

1. Whether there is mis-joinder of parties and causes of action? If so, to what effect?
2. Whether the termination of services of S/Shri Khajan Singh, Raghu Nandan Lal and Ran Singh was justified and in order? If not, to what relief they are entitled?

The workmen examined Shri M. K. Jain, Deputy Labour Commissioner, Haryana W. W. 1 on 26th April, 1973 and Shri Laxmi Narain W. W. 2 on 21st March, 1974 when the case was adjourned to 26th June, 1974 for recording their remaining evidence. The management failed to put in their appearance on 26th June, 1974. The case being fixed for 19th May, 1975, Shri D. S. Rekhi appearing for the management requested for grant of an adjournment on the ground of his illness and the case was thus adjourned to 12th August, 1975.

None appeared for the management on 12th August, 1975 with the result that ex parte proceedings were taken up against them and the ex parte evidence of the workman was recorded.

Each one of the workman appeared as his own witness and stated that his services had been terminated by the management without service on him of any charge-sheet and without holding an enquiry and that he had not been gainfully employed after the date of termination of his service and failed to get a job despite efforts made by him. I see no reason to disbelieve the statement of all the 3 workmen particularly when the proceedings against the management are ex parte and the statements remained un-rebutted.

I, therefore, relying upon their evidence decide issue No. 2 against the management. It could not be shown by the management that the reference suffered from the defect of mis-joinder of parties and causes of action, I thus decide issue No. 1 also against the management.

As a result of my findings on issues Nos. 1 and 2, I hold that the termination of services of the workman was un-justified and that they are entitled to be reinstated with effect from 1st October, 1971 with full back wages and continuity of their service. I return the award accordingly. There shall be no order as to costs.

Dated 22nd September, 1975.

MOHAN LAL JAIN,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 11951-4Lab-75/31804.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding officer Labour Court, Haryana, Rohtak in respect of the dispute between the workmen and the management of M/s Executive Engineer Augmentation Mechanical Division, W.J. C., Karnal.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK.

Reference No. 58 of 1973

between

SHRI JASWANT SINGH AND THE MANAGEMENT OF M/S EXECUTIVE ENGINEER
AUGMENTATION MECHANICAL DIVISION, W. J. C., KARNAL.

AWARD

As common questions of law and fact are involved in references Nos. 58 of 1973, 51 of 1973, 251 of 1972, 238 of 1972 and 235 of 1972, in respect of the preliminary issues, all these references shall be disposed of by me together,—*vide* this order. Whereas references Nos. 58 of 1973, 51 of 1973, 241 of 1972 and 238 of 1972, were consolidated,—*vide* order dated 10th February, 1975 of my learned predecessor Shri O. P. Sharma, reference No. 235 of 1972 also relates to the questions in dispute as involved in the other references.

The following dispute was referred for adjudication to this court by the Governor of Haryana, in exercise of powers vesting in him,—*vide* clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947, hereinafter referred to as the act, relating to the demand made by each one of the workmen Jaswant Singh, Prem Singh, Ram Chander, Ajit Singh, and Chander Bhan respectively.

“Whether the termination of services of S/Shri Jaswant Singh/Prem Singh/Ram Chander/Ajit Singh/Chander Bhan was justified and in order? If not to what relief is he entitled?”

Whereas each one of Jaswant Singh, Ram Chander, Ajit Singh and Chander Bhan sent a notice of demand to the Executive Engineer Augmentation Mechanical Division, W. J. C., Karnal that his services had been terminated without service of prior notice of charge-sheet on him, Shri Prem Singh served a like notice of demand on the Superintending Engineer Augmentation Mechanical Division, W. J. C., Karnal. The Conciliation Officer in each case being not successful in bringing about a conciliation between the parties submitted his report with the result that the dispute was referred to this court by the Government while impleading each one of the workmen on the one hand and the Executive Engineer and the Superintending Engineer on the other.

Usual notices of the reference being sent to the parties concerned, they appeared in this Court and filed their pleadings.

Each one of Jaswant Singh, Prem Singh, Ram Chander and Ajit Singh filed his statement of claim with an allegation that his services, as a workman had been terminated without reason and without service of any notice or chargesheet on him and that the Executive Engineer or the Superintending Engineer was responsible for this illegality. He prayed for his reinstatement with continuity of his service and full back wages.

The respondent filed the written statement in each case setting up preliminary objection that the Executive Engineer or the Superintending Engineer could not be impleaded as a party in

the proceedings and the State of Haryana was the only necessary party to the proceedings and any order passed against the Executive Engineer or the Superintending Engineer would be invalid. The claim of the workman was further resisted on the ground that the office of the Executive Engineer or the Superintending Engineer Augmentation Mechanical Division, W. J. C., Karnal was not an industry and the reference as such was not legally maintainable. On merits the claim of the workman was denied with a plea that the name of the later was struck off the rolls as a result of his absence or on completion of time bound work.

The workman controverted the pleas of the respondent,—*vide* replication filed by him and reiterated the allegations made by him in the demand notice with the result that the following issues were framed by my learned predecessor Shri O. P. Sharma,—*vide* his order, dated 30th September, 1974.

1. Whether the office of the XEN Augmentation Mechanical Division, W.J.C., Karnal is an industry as defined under section 2-J of the Industrial Disputes Act and this court has jurisdiction to adjudicate upon the demand the subject matter of the reference ?
2. Whether the reference is bad in law for non-joinder of the State of Haryana as a necessary party in the proceedings ?
3. Whether the termination of services of the workmen was justified and in order ? If not, to what relief they are entitled ?

I have heard authorised representative for the workman in each case and Shri Ram Parshad, Law Officer of the respondent and have carefully seen the record. I decide the issues Nos. 1 and 2 treated as preliminary as under. I consider it necessary to decide issue No. 2 first.

Issue No. 2—

It can not be disputed that only the employer is legally answerable to all claims of the workman, either referred by way of an industrial dispute to the Labour Court or to the Industrial Tribunal or made by him under section 33-C(2) of the Act. It is thus necessary to find out and explain the definition of employer as given in clause 'g' section 2 of the Act, reproduced as under :—

“clause 2(g) :—employer means—

- (i) in relation to industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf or where no authority is prescribed the head of the department ;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the Chief Executive Officer of that authority.”

It stand admitted on both sides that in case, Irrigation Department of the State of Haryana is held to be an industry, this industry is carried on by or under the authority of the State Government and in absence of proof of the authority prescribed under sub-clause (i) of clause (g) of section 2 of the Act, either under a statute or instructions of the Government of the State of Haryana, the head of the department shall be considered as an employer under the definition of that term stated above. The parties led no evidence on issues Nos. 1 and 2 and it shall have to be held under the circumstances, that no authority has been prescribed by the State Government, as an employer for answering the claim of the workman and that the head of the department shall be taken as legally competent to answer such claim.

The parties having chosen not to adduce any evidence on the second important question relating to the person recognised as head of the Irrigation Department, I consider it just and proper to consult in this connection the P.W.D. Code, II addition (V re-print) issued by the Punjab Government in the Public Works Department in consultation with the Finance Department with a preface recoded by Chief Engineer Irrigation Works, Punjab, as now applicable to the State of Haryana. It would be well to re-produce in extenso the provisions of paragraph 1.43 of chapter 1 (Establishment Recruitment of Officers) relating to the Chief Engineer under the heading “duties of officers of the Public Works Department” on page 25 of the P.W.D. Code.

- “1. 43. The Chief Engineer is the administrative and professional head of the Branch of the Department in his charge, and is responsible for the efficient working of his branch. He is also the responsible professional adviser of Government in all matters relating to his charge, or on which his advice may be desired. He is required to bring clearly, and faithfully before Government all subjects reserved for its decision or for that of the Central Government.”

It would appear from a plain reading of the aforesaid provision that the Chief Engineer is the Administrative and Professional Head of the establishment for all purposes and is responsible for the efficient working of the branch and neither the Executive Engineer nor the Superintending Engineer can by any stretch of imagination be said to be the head of the irrigation Department.

The workman admittedly served a notice of demand on the Executive Engineer or the superintending Engineer with the result that he (XEN or S. E.) alone was impleaded as a party by the Government in the reference sent to this court for adjudication. The case was defended by the Executive Engineer or the Superintending Engineer alone. Neither any request has been made before me nor I consider myself legally competent to amend the reference so as to implead the Chief Engineer as a party instead of the Executive Engineer or the Superintending Engineer. This would in fact be beyond the scope of my authority to do so. I thus hold that the reference is bad in law for non-joinder of the employer (Chief Engineer of the Irrigation Department of the State of Haryana) a necessary party in the case. I accordingly decide this issue in favour of the respondent.

Issue No. 1 :—

This issue shall have to be answered with reference to the Irrigation Department as such and not the office of the Executive Engineer or the Superintending Engineer Augmentation Mechanical Division, W. J. C., Kanal, as no office can be held to be an industry. The real question requiring decision is as to whether the Irrigation Department is an industry or not.

This matter stands concluded by a Division Bench decision of the Madhya Pradesh High Court between Madhya Pradesh Irrigation Karamchari Sangh, Sambhag Gwalior, Chambal Canal, Sheopur Kalan, District Morena (M. P.) reported in 1972-1-LLJ-374. While relying on a decision Secretary Madras Gymkhana Club Employees Union V/S management of the Club reported in 1967. II-LLJ,720, an authority of the Supreme Court, their lordships of the Madhya Pradesh High Court, while deciding an identical issue held as under.

“Held, it would appear that an activity of an institution would amount to “industry” within the meaning of the Act only if the following conditions are fulfilled :—

- (i) It must be analogous to trade or business in a Commercial sense although there be no profit-motive.
- (ii) It must be capable of being described as an undertaking resulting in material goods or material service.

We find that both the conditions are fulfilled in this case. The project is engaged in rendering material service to the community by providing them irrigation facility. The Government may not be carrying on this undertaking with profit-motive but that would not make any difference in as much as the undertaking is analogous to trade or business, as the “irrigation facilities are provided on payment of certain charges. Such an activity of the Government cannot be characteristic as Government or administrative in character. It is essentially a business activity, even though the motive is general welfare of the people and not profit. We, therefore, hold that the ‘project’ is an industry within the meaning of the Act.”

I this in view of the observations of the lordships of the Madhya Pradesh High Court made in an identical case, on all fours with the facts of the case under decision, hold the Irrigation Department as an industry and decide this issue in favour of the workman.

I as a result of my findings on Issue No. 2 hold that the references in question impleading the Executive Engineer or the Superintendent Engineer Augmentation Mechanical Division, W. J. C. Kanak are bad in law and any of the workmen is not entitled to any relief. There shall be no order as to costs. I return the award accordingly

MOHAN LAL JAIN,

Presiding Officer,

Labour Court, Haryana,
Rohtak.

Dated 25th September, 1975.